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Applying *J.D.B. v. North Carolina*

Toward Ending Legal Fictions and Adopting Effective Police Questioning of Youth

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One of the critical points of contact for youth and the juvenile justice system occurs when police question youth. During questioning, police may be required to give youth *Miranda* warnings to inform them of their right to remain silent and their right to legal counsel. In 2011, the U.S. Supreme Court, in *J.D.B. v. North Carolina*,[1] adopted a developmental approach regarding how the age of a juvenile determines when police must provide *Miranda* warnings. Significantly, the Court's decision was the first time the Court applied its understanding of juvenile development outside the punishment context.[2] This chapter explores how *J.D.B.* has been implemented by reviewing 20 state court cases involving police questioning and interrogation of juveniles decided since *J.D.B.* was handed down in 2011.

Our analysis indicates that the country is far from unified in its view of the role of age-based maturity and competence in determining when a youth should be given *Miranda* warnings. More significantly, the analysis demonstrates that the notion of developmental maturity is still a foreign concept for some judges and law enforcement officers. The results indicate that some system stakeholders recognize that youths' fear of authority and incarceration is useful leverage for obtaining information, compliance, and confessions, even while they deny that youthfulness has any role in whether juveniles have the capacity to invoke their rights.

Police have acknowledged that the interviewing and interrogation of youth is a tricky and difficult area to navigate.

> Overall, law enforcement is not adequately trained in interviewing and interrogating juveniles. While there are numerous courses available in forensic interviewing of children who may be victims, there are few training courses that target techniques for interviewing and interrogating youth who may be suspects or witnesses. Interview and interrogation is standard training for law enforcement agencies, however, it typically does not cover the developmental differences between adults and youth nor does it cover recommended techniques to be used on youth versus adults. This often leads law enforcement practitioners to use the same techniques on youth as with adults.[3]

A study of police academies' juvenile justice training indicates that academies do not train officers to be developmentally competent when working with juveniles, nor do they train officers to use age-appropriate approaches when communicating with youth.[4] Instead, the primary focus of training for recruits is juvenile law. In addition, this analysis suggests that race plays a role in the outcomes of the interviews and court decisions. A recent study indicates that the age at which police stop according youth the "privilege of innocence" varies directly with race. African American youth tend to lose this privilege around ages 10 to 12, fully two to four years before white children.[5] Thus, "protections of childhood are diminished for Black children in contexts where they are dehumanized. . . . If human childhood affords strong protections against harsh, adult-like treatment, then in contexts where children are dehumanized, those children can be treated with adult severity."[6]

The Court's decision in *J.D.B.* is a first critical step in the movement to align practices of police, prosecutors, and judges with the recognition that youth perceive, process, and respond differently than adults and that those differences also affect their reactions under stress. The Supreme Court's recognition that these developmental differences are common knowledge is not routinely borne out by either police practices or court decisions. The bias toward holding youth "accountable" trumps police and court willingness to apply a "reasonable child" standard—even for youth in situations where police hold all the power. Instead, as this review indicates, we have significant distance to travel before we truly embrace a "reasonable child" standard in which courts acknowledge how police power is perceived by youth.

Section 1 of this chapter reviews the *J.D.B.* decision. Section 2 presents an analysis of the post-2011 cases in which state courts have reviewed questioning of youth. In the final section of the chapter, we articulate a developmentally informed standard that should be applied in a reframed juvenile justice system.

I. *J.D.B. v. North Carolina*

In *J.D.B. v. North Carolina*, a uniformed police officer, a school resource officer, a principal, and an interning school administrator held a 13-year-old, seventh-grade boy in a closed-door conference room during school hours for at least 30 minutes while they questioned him about his involvement in two recent home break-ins.[7] Prior to the questioning, the boy was never read his *Miranda* rights, allowed to call his legal guardian, or told that he was free to leave the room.[8] J.D.B. initially denied any involvement in the crime. After the officers threatened J.D.B. with the possibility of confinement in a juvenile detention center, he confessed.

After his initial confession, J.D.B. was told that he did not have to answer any questions and that he was free to leave. Instead, J.D.B. sat with the officers and provided a written statement further detailing his participation in the crime. At trial, J.D.B.'s attorney moved to have the boy's statement suppressed, arguing that he was "interrogated by police in a custodial setting without being afforded *Miranda* warning[s]."[9] The trial court held, and North Carolina appellate courts affirmed, that J.D.B. was not in custody when he confessed.

On appeal to the U.S. Supreme Court, the justices addressed the issue of "whether the age of a child subjected to police questioning is relevant to the" *Miranda* custody analysis.[10] The Court found that "by its very nature, custodial police interrogation entails 'inherently compelling pressures.' Even for an adult, the physical and psychological isolation of custodial interrogation can 'undermine the individual's will to resist and . . . compel him to speak where he would not otherwise do so freely.'"[11] Such pressure has driven a significant portion of individuals to confess to crimes they did not commit, and the risk of such false confessions is "all the more acute—when the subject of custodial interrogation is a juvenile."[12] Therefore, the Court explained, the *Miranda* warning is required in "any circumstance that 'would have affected how a reason-

able person' in the suspect's position 'would perceive his or her freedom to leave.'"[13] In some situations, a child's age "'would have affected how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave.'"[14]

In light of children's limited, immature decision making and generally inadequate ability to understand the surrounding world,[15] the Court held that "so long as [a] child's age [is] known to the officer at the time of police questioning, or . . . [is] objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test."[16] The Court determined that a child's age is a relevant factor in deciding whether a situation calls for an investigating police officer to read the juvenile his or her *Miranda* rights. Further, Justice Sotomayor admonished juvenile justice system stakeholders that this analysis was one of common sense: "In short, officers and judges need no imaginative powers, knowledge of developmental psychology, training in cognitive science, or expertise in social and cultural anthropology to account for a child's age. They simply need the common sense to know that a 7-year-old is not a 13-year-old and neither is an adult."[17]

In so doing, Justice Sotomayor reiterated the holding of the Court in *Haley v. Ohio*, 332 U.S. 596 (1948). Justice Douglas wrote for the majority in *Haley* that the use of coercive tactics involving relays of officers in a police station questioning and beating a 15-year-old boy from midnight to five a.m., without providing the slightest intimation of the boy's right to remain silent, was unconstitutional:

> What transpired *would make us pause for careful inquiry if a mature man were involved*. And when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability, which the crisis of adolescence produces. A 15-year-old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men possibly might stand the ordeal from midnight to 5 a.m. But we cannot believe that a lad of tender years is a match for the police in such a context. He needs counsel and support if he is not to become the victim

> first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, may not crush him.[18]

Fourteen years later, the Court reiterated these points in *Gallegos v. Colorado*, 370 U.S. 49 (1962). In that case, a boy was held for five days and was not permitted to see anyone before signing a confession. Justice Douglas cited the age of the 14-year-old Gallegos and the decision in *Haley* to overturn the lower court's finding of a refusal to overturn the boy's confession:

> But a 14-year-old-boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded, and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights. . . . He cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions. He would have no way of knowing what the consequences of his confession were without advice to his rights—from someone concerned with securing him those rights—and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself.[19]

Remarkably, the following review of state cases interpreting *J.D.B.* indicates that the twentieth-century U.S. Supreme Court recognition of the threat to due process posed by the combination of coercion and compulsion to children continues to need clarification for police and judges in this century. Indeed, several state decisions indicate that the notion that *age matters* remains a nascent idea.

II. State Court Application of *J.D.B. v. North Carolina*: An Age-by-Age Analysis

Since *J.D.B.*, state courts have interpreted the Supreme Court's holding in 20 cases to ascertain the admissibility of statements made by male juvenile defendants during questioning by police. In not one decision involving police interviews of youth *did a youth manifest and act on*

the belief that he or she could walk away from the officer interviewing him or her.[20]

However, this review of state court decisions indicates that state courts believe that youth at different ages are capable of doing just that. Courts continue to afford different degrees of weight to juveniles' age in determining whether police had an obligation to Mirandize youth. Age as a determinant of a juvenile's capacity and competence in holding officers to a high standard of disclosure continues to be highly variable.

Nine of these twenty cases were decided in California. Police questioning typically took place at police stations and schools. No parent was present during any of the disputed interviews. The age of the juvenile defendants ranged from 8 to 17.

Review of these cases was conducted as a function of the *age* of the juvenile who sought to have his statement suppressed. The available cases provide an emerging view of patterns concerning how age factors into courts' scrutiny of police interviews and interrogations of youth.

Several courts continue to privilege factors that reflect *officers'* perceptions or the judiciary's biases over youths' age. For instance, officers' *perceptions* of a youth's size or age trumped officers' obligation to determine the age of the person. Interestingly, the defense of being ignorant of a person's age—such as in cases involving underage drinking or statutory rape—is not available to citizens. But judges routinely gave police officers' claim that they didn't know that the youth was under 18 credibility in determining whether officers should have given youth *Miranda* warnings.

The cases where courts found that police had failed to provide *Miranda* warnings when required often had three elements in common: the place in which the questioning occurred, the time and duration of the questioning, and the availability of adults to protect the child's interest during the interview. When youth were interviewed on the premises of a state police authority—such as at a police station, in a police cruiser, at a child welfare office, or in a locked facility—the courts tended to perceive that the youth would feel coerced. (The notable exception to this pattern is the case described later of *In re Michael S.*, in which the interview took place in a locked juvenile facility.) Courts discounted the possibility of coercion for youth interviewed at or near their homes. The courts' consideration of the timing of the interview, including whether it was prolonged or occurred at a time that would be experienced as

disruptive, for example, in the middle of the night, was key to courts' determination of whether the need for *Miranda* protections was triggered. When parents were available to participate in the interview but were excluded or not invited to participate in the interview, the courts tended to find police had erred by failing to provide youth the necessary and available protection of an interested adult.

Where the courts found that police had adequately warned youth of their *Miranda* rights, four factors were typically present:

1. The presumption of the youth's sophistication due to age or prior contact with the system
2. The preference for the *officer's* subjective perceptions of the youth and the context trumping the *youth's* perception of his or her freedom to leave
3. The assumption of the youth's consciousness of legal rights when the case involved a serious crime (e.g., typically a felony involving violence against a person)
4. The treatment of age as only one of many other factors, and not deserving any special weight, in assessing a potential *Miranda* violation

Thus, for example, in a case in which a youth was interviewed in a locked facility where he was awaiting adjudication on an unrelated charge, the court found that the sophistication of the youth trumped any coercive feature of the premises in which the interview occurred. Courts accepted officers' subjective perceptions, finding, for instance, that the *size* of a youth justified an officer's assumption that the youth knew his or her rights.

Finally, present in the analysis are cases involving the complete denial of age as a factor affecting a child's perception when interviewed by an officer. This is most dramatically demonstrated in the case of the eight-year-old defendant in *Hunt v. The Cape Henlopen School District*.

Application of J.D.B. *to an Eight-Year-Old Defendant*

In *Hunt v. The Cape Henlopen School District*, a state trooper and school resource officer questioned Hunt, an eight-year-old student, who was

suspected to have taken money from an autistic student on a school bus.[21] The school resource officer escorted Hunt to a classroom to interview him. He told Hunt he was not in trouble.[22] During the interview, however, the officer told Hunt that he had the authority to arrest and put Hunt in jail if he lied. In determining whether Hunt was "in custody," in order to rule on Hunt's false imprisonment/false arrest claim, the Delaware court noted that even "if the officer did not know [Hunt's] exact age, it would have been objectively apparent to a reasonable officer that [he] was an elementary school-aged child."[23] The Superior Court acknowledged that Hunt was eight years old at the time of questioning and was "justifiably" intimidated by the officer "and ultimately began to cry."[24] The factor of Hunt's age was insufficient, however, to persuade the court; the Delaware Superior Court ruled that Hunt should have known he was free to leave and did not have to answer the officer's questions because he was not in custody.[25]

A year later, the Delaware Supreme Court reversed this portion of the Superior Court's decision, holding that Hunt had been in custody.[26] The Delaware Supreme Court based its holding on the fact that the eight-year-old was escorted to the vice principal's office by a teacher's aide, where he met the officer, who was in uniform, carrying a gun, handcuffs, and other indicia of police authority. Furthermore, the officer met with the child in the reading lab for close to an hour, with the door closed for some period of time, and never told the child he could leave.[27]

Application of J.D.B. *to 13-Year-Old Defendants*

State courts have placed varied weight on the age of 13-year-old juvenile defendants. For example, a California case, *In re Michael S.*, involved a 13-year-old boy charged with forcible rape.[28] A police officer arrived at Michael's house and asked to speak with him outside. Michael agreed to sit, without handcuffs, in the back of the officer's patrol car for questioning.[29] The officer then read Michael his *Miranda* rights, and Michael stated that he understood his rights and was willing to speak to the officer without anyone else present.[30] After questioning Michael, the officer arrested him. While Michael was in juvenile detention, another detective interviewed him while his probation officer was in the room. The detective read Michael his *Miranda* rights, and Michael

signed a form saying he understood.[31] Michael then told the detective what had happened. The court determined that even a reasonable 13-year-old in Michael's position "would understand that he was voluntarily leaving the house with [the officer] and that he was free to end the encounter at any time, . . . [and the officer] was not coercive when he asked [Michael] to step outside."[32] With respect to Michael's second interview while in the juvenile detention center, the court considered whether, in light of Michael's age, the detective's tactics were such that Michael's "free will was overborne at the time he confessed."[33] The court found "the detective did not use any coercive methods that would be reasonably likely to produce a false statement, even from a 13-year-old."[34] Furthermore, the court determined that Michael "demonstrated at multiple times during questioning that he understood what he did . . . was wrong, even when he was not prompted to do so."[35] Thus, the court concluded that Michael's confession was voluntary and properly admitted.

In an Ohio case involving a 13-year-old, the court found differently. J.S.'s father brought him to the police station for questioning.[36] J.S.'s father was not permitted to accompany his son during the interview. J.S. was not informed that he could leave at any time; he was told only that he would be allowed to go home with his father after the interview.[37] The court found that J.S. was only 13 at the time of the interview and that, consequently, there was a high likelihood that J.S. was unaware of his rights, including the right to be silent or to request a lawyer.[38] The court never discussed the availability of J.S.'s parents to participate in the interview, when it concluded that he was in custody during the interview and the interviewing officer should have advised him of his *Miranda* rights.

In a second California case, *In re Robert J.*, the court remanded the case of a 13-year-old boy charged with arson after igniting a paper towel in a school bathroom.[39] In that case, two police officers interviewed Robert in the principal's office with the door closed and in the presence of the principal. During the ten-minute interview, the officers never told Robert he was required to speak to them, that he could not leave the office, or that he was under arrest. The California court found that the juvenile court failed to consider Robert's age when determining whether the interrogation was custodial.

Application of J.D.B. *to 14-Year-Old Defendants*

Fourteen-year-olds are an age group of special interest. According to the work of psychologists assessing competency, 14 is the new 16.[40] Researchers in the field of juvenile competency have concluded that post-2000, 14 is the age below which assumptions of youth competence are ill-advised. Some states have recognized the validity of such concerns and require a parent to be present in the questioning of youth who have waived their rights.[41] But court interpretations of *J.D.B.* indicate that these perceptions are not normative across the U.S. Indeed, for many courts, 14 is the new 18.

Similar to state court applications of *J.D.B.* for 13-year-old defendants, courts have been unpredictable in making *Miranda* custody determinations for 14-year-olds. The key factors these courts considered when determining when a "reasonable" 14-year-old should perceive that he or she is in custody has to do with the level of intimidation youth experience when being questioned by school and police officials and the location of the questioning. Courts appear to perceive that questioning on school premises by school administrators or multiple officers is less intimidating.

For instance, in *C.S. v. Couch*, C.S., a high school freshman, claimed his *Miranda* rights were violated when his principal and vice principal questioned him with regard to claims that he sexually harassed another student.[42] The interrogation took place at the school, and the school officials did not tell C.S. that he could leave or that he did not have to incriminate himself. The Indiana state court, noting that a child's age factors into the custody analysis pursuant to the holding in *J.D.B.*, rejected C.S.'s claim, reasoning that "custody and interrogation do not exist without the presence of law enforcement officers."[43] The court held that "a student is not entitled to *Miranda* warnings before being questioned by school officials."[44] This conclusion was based on the idea that the "policy underlying the *Miranda* safeguards [focuses on] overcoming the inherently coercive and police dominated atmosphere of custodial interrogation," and therefore "when school officials question students in school outside of the presence of law enforcement officers and free from their influence, there is no such coercive atmosphere against which to protect."[45]

In the Ohio case of *In re T.W.*, a 14-year-old boy was accused of inappropriately touching his stepsister.[46] When his parents drove him to Child Services for questioning, T.W. was escorted to an interview room with audio and visual equipment. Child Services staff and a police officer interviewed T.W. for an hour.[47] The officer did not tell T.W. he was under arrest and did not advise him about the possible charges, and T.W. never asked for his parents to be present during the interview. About an hour into the interview, T.W. gave a written admission of guilt and left Child Services with his parents.[48] In light of *J.D.B.*, the court determined that at 14 years of age, "a reasonable juvenile in T.W.'s position would . . . be intimidated and overwhelmed. There is no evidence that T.W. volunteered to go to Children Services. . . . T.W. was escorted away from his [parents] by two unfamiliar authoritarian figures. . . . A reasonable juvenile in T.W.'s position would not have felt free to terminate the interview and leave the premises."[49] Therefore, the court held that T.W.'s statements were inadmissible.

A third variation of this scenario occurred in Texas, in the case of *In re C.M.A.*[50] There, a 14-year-old was questioned as a suspect in a burglary and aggravated assault of a child. The youth was interviewed twice, first in a principal's office and then in a classroom. In the first interview, the 14-year-old was interviewed by one officer who explained that C.M.A. was free to leave. In the second interview, C.M.A. was interviewed by several officers. He was not informed that he was free to leave. On the basis of the second interview, he was charged. On a motion to suppress, the court found that C.M.A., a reasonable 14-year-old, should have perceived that he was free to end the interview and invoke his right to counsel.

In re Juan S. involved a 14-year-old boy charged with involuntary manslaughter. When Juan's parents first brought him to the police station for questioning, officers told him he was not under arrest and simply indicated that they wanted to take him out of the neighborhood environment in order to speak with him.[51] The California Court of Appeals found that the trial court failed to consider Juan's age as part of its determination that the first interview was not a custodial interrogation. In this case, as in *In re T.W.*, the age of the juvenile in conjunction with being interviewed on the premises of an "authority" was key to estab-

lishing that a child of 14 is "no match" for the police. In both cases, the courts decided to suppress the youth's confession.

In another California case, however, *People v. Alexis C.*, a 14-year-old was treated differently. Alexis C. was accused of participating in the gang rape of a teenage girl.[52] While Alexis was confined in a juvenile camp for an unrelated offense, a police officer interviewed him about the rape and told him that he did not have to talk and that he was free to leave the interview.[53] He was also informed that he was being interviewed as a witness and that he was not going to be arrested.[54] The officer did not read Alexis his *Miranda* rights. Despite the defendant's age, the court held that "the Minor was fully aware he was free to terminate the interview, . . . [but] he made a decision to stay and talk. There is no basis in the record to support any inference that he was intimidated or failed to understand his circumstances at the time he decided to speak to the detective."[55] Here the youth's age did not trump the court's perception that a 14-year-old being in a locked facility was "free" to walk out of an interview with a police officer. Unlike the court in *Gallegos*, which worried that a 14-year-old was "unable to know how to protect his own interests or how to get the benefits of his constitutional rights," the court in *Alexis C.* appears to have been swayed by the sophistication argument: because the youth was in a locked facility for another matter, he was sophisticated enough in the ways of the system to make choices that would reflect his best interests.

Application of J.D.B. *to 15-Year-Old Defendants*

In *People v. Nelson*, 15-year-old Nelson burglarized his neighbor's home, and a few days later the neighbor was found dead.[56] Two officers spoke with Nelson outside his home. Nelson denied killing his neighbor and offered to take a lie-detector test.[57] The officers later returned to Nelson's home, and Nelson agreed to accompany them to the police station. Nelson answered some preliminary questions and was then advised of his *Miranda* rights.[58] The officers questioned Nelson for several hours, during which time he repeatedly tried to contact his mother and continuously asked to be left alone.[59] Before his family arrived, he confessed to murder.[60] The appellate court held that Nelson appeared confident and mature during the questioning and was "no stranger to the criminal

justice system."[61] The court held that Nelson's insistence on calling his mother was not an invocation of his *Miranda* rights, and therefore officers were not required to stop their questioning and his custodial statements were properly admitted at trial.[62]

Application of J.D.B. *to 16-Year-Old Defendants*

There was less variation in state courts' application of the *Miranda* custody analysis to 16-year-old defendants. The "sophistication" argument held sway with this group of youth, who were assumed to understand their rights, regardless of prior experience with the courts, their capacity, or their competence.

For instance, in the California case of *In re J.W.*, a 16-year-old was charged with exhibiting a deadly weapon and possessing a weapon on school grounds. While investigating the incident, a police officer arrived at J.W.'s friend's house and told J.W. and his friends to sit on the curb of the sidewalk "and stay where they were. . . . [J.W. was] not free to leave. However . . . [the boys] were not handcuffed, and the officers did not display any weapons."[63] Without reading *Miranda* rights, the officers began questioning the boys. After J.W. told the officers the location of the weapon in question, the officers arrested J.W. and his friends.[64] The court found that as a result of the circumstances under which J.W. made his statements, the fact that the officer did not pose confrontational questions, and because J.W. was nearly 17 years old at the time, it was unlikely J.W. believed he was in official police custody.[65]

Likewise, in *Gray v. Norman*, 16-year-old Gray was convicted in Missouri of shooting his neighbor during a home burglary.[66] Police officers asked Gray and his mother to ride in separate police cars to the police station. At the police station, Gray was placed in a room with two officers and told he was not under arrest and could leave at any time.[67] Gray stated that he did not want his mother present during questioning, that he understood his rights, and that he wanted to make a statement.[68] After Gray signed a "juvenile" *Miranda* form, he answered questions for about an hour and then asked to have his mother present.[69] The next day, officers showed up at Gray's house with a search warrant.[70] They took Gray to the hospital to get a blood sample and then to the highway patrol office, where he was read his *Miranda* rights.[71] In the presence

of a police officer and a juvenile officer, Gray signed another "juvenile" *Miranda* waiver form and gave a videotaped confession. The appellate court confirmed the state court's finding that age is only one of the factors considered when voluntariness of a juvenile confession is challenged. The court concluded, "Gray's age alone is insufficient to support his claim that his confession was not made voluntarily or intelligently."[72]

In the North Carolina case *In re R.P.*, a school police officer observed a student engage in a hand-to-hand transaction with another student. The officer pulled the juvenile out of his class and questioned him.[73] The juvenile admitted to handing the female student a cigarette and, when asked, informed the officer that he had pills on him for which he did not have a prescription.[74] The appellate court was "unable to discern whether the trial court considered the juvenile's age in accordance with . . . *J.D.B.*" and consequently remanded the case.[75]

Finally, the Wisconsin Court of Appeals in *State v. Oligney*[76] found that a 16-year-old had not been improperly denied his *Miranda* rights during a two-hour interview with a school resource officer (SRO) and a police detective at his school. The detective had been sent to the school to interview Oligney after a victim claimed that Oligney had sexually assaulted her and that he later apologized to her in numerous phone text messages.

The SRO and detective conducted a recorded interview with Oligney in a classroom for two hours. The police failed to notify his parents before interviewing him, and Oligney was not permitted to contact his parents. Although the officers told Oligney he was free to leave, Oligney stayed. Even when the school day ended and all the other students left the school, Oligney remained in the room with the officers until they concluded the interview. During the questioning, the officers promised to tell the truth but intimated (untruthfully) that they had read texts Oligney had sent to the victim in which he apologized for his behavior.

The Court of Appeals noted that during Oligney's *Miranda-Goodchild* hearing[77] the 16-year-old made "much of the fact that there were two officers questioning him, and his belief, articulated at the suppression hearing, that he was at risk of being arrested."[78] Instead of crediting Oligney's testimony and the fact that the youth stayed until the police concluded their interview, the court interpreted this behavior as proof of Oligney's understanding that he was free to go and not in custody. The

fact that the officers never read Oligney his *Miranda* rights did not merit the court's attention. Indeed, the Court of Appeals concluded that "the mere presence of two officers is insufficient to establish a custodial situation. . . . The custody inquiry is an objective test: Oligney's subjective fear of arrest is therefore irrelevant."[79]

Rejecting the reasoning of *J.D.B.*, the court held that "a child's age is not determinative, and may not even be a significant factor."[80] Instead, the court invoked its own subjective view based on evidence not in the record that "a reasonable person of Oligney's age would not ordinarily have felt obligated to participate against his or her wishes; teenagers are often recalcitrant."[81]

In this decision, the Wisconsin Court of Appeals systematically rejected every aspect of the *J.D.B.* decision. The Court of Appeals deftly used the youth's age to justify its generalizations about youth as "recalcitrant" and in need of being treated like adults and to reject the Supreme Court's directive in *J.D.B.* that even "recalcitrant" teenagers are due special protection under the law due to their immaturity. The judges denied consideration of the youth's subjective understanding of his circumstances and instead substituted the court's subjective view of youth, not based on any evidence in the record, concerning when a reasonable person Oligney's age would have known he was in custody. The court assumed that the serious nature of the charge meant the 16-year-old understood his legal rights and the operation of the juvenile and adult criminal justice systems.

State Court Application of J.D.B. *to 17-Year-Old Defendants*

State courts demonstrated the greatest amount of consistency in their *Miranda* custody analyses to 17-year-old defendants. The courts applied the "sophistication" argument, reducing an officers' obligation to disclose that the youth was in custody and essentially denying the role of age as a factor. Seventeen-year-olds are thereby treated as adults.

For instance, in *People v. Lewis*, while investigating the murder of a security guard, a California police officer stopped 17-year-old Lewis in a car that matched video surveillance evidence.[82] Lewis denied any involvement but later confessed to driving the individuals who beat the security guard when the officer told him about the surveillance video.[83]

Lewis agreed to ride with the officer to the police station to give a more detailed statement. At the police station, the officer told Lewis he was not under arrest and was free to leave.[84] After Lewis gave additional details, another officer arrived who told Lewis she had to read him his *Miranda* rights because he was a juvenile, and Lewis was asked to sign a waiver.[85] The court found that, with respect to Lewis's age, "Lewis was over six-feet tall and his probation report indicates he weighed approximately 200 pounds; there is no reason to conclude the fact he was a minor was known to [the officer] or objectively apparent to him or a reasonable officer for purposes of considering his age in the custody analysis."[86] The court concluded that the objective facts were consistent with an environment in which a reasonable person in Lewis's position would have felt free to leave at any time.[87]

Similarly, in the case of *In re J.V.*, a 17-year-old ran away from a car accident in California.[88] The court found no evidence that the officer knew that J.V. was a juvenile. The court took judicial notice of the *officer's s*ubjective perception as well as the fact that J.V. was six months shy of his 18th birthday and concluded that age was not a significant factor in deciding when to read J.V. his rights.

In the Iowa case of *State v. Pearson*, a 17-year-old ran away from his group home and assaulted an elderly man with a frying pan during a home burglary.[89] Officers took Pearson to the police station and read him his *Miranda* rights, but Pearson refused to waive his rights or speak until he consulted his attorney.[90] At the group home, Pearson's social worker spoke with him in a room with the door open in order to assess his reason for running away.[91] While Pearson spoke with his social worker, he confessed to hitting the elderly man with a frying pan.[92] With respect to his age, the court found that "Pearson was just seven months shy of his eighteenth birthday at the time of his confession. . . . Pearson brazenly beat an elderly man in the victim's own kitchen. He had a prior history of assaulting adults, including his mother and police. He had no difficulty invoking his *Miranda* rights at the . . . police station after his apprehension."[93] In addition, a social worker who was not working for the police conducted the interview. The court concluded that the circumstances of this confession lacked the coercive pressure of a custodial interrogation.

Likewise, in *Commonwealth v. Bermudez*, a 17-year-old boy's mother drove him to the police station after an officer asked to speak with

him about a recent shooting.[94] While Bermudez's mother remained in the lobby, two detectives escorted Bermudez into an interview room equipped with video recording.[95] The detectives read Bermudez his *Miranda* rights and made sure he understood each provision and could read and write English.[96] Bermudez had previously been diagnosed as having special needs, particularly in reading and writing.[97] During the 70-minute interview, the detectives repeatedly told Bermudez he was not a suspect in the shooting and would be allowed to return home with his mother.[98] Bermudez eventually admitted to having a firearm on the day of the shooting and said he gave it to someone who requested it. At the end of the interview, the detectives prepared a typewritten copy of Bermudez's statement. Bermudez read, corrected, initialed, and signed the statement.[99] The Massachusetts state court found that Bermudez's age, "a few months shy of his eighteenth birthday, placed him on the cusp of majority, and far removed from the tender years of early adolescence."[100] Viewing "all the pertinent factors objectively, including [Bermudez's] age at the time of the interview," the court concluded "that the interrogation was not custodial so as to require Miranda warnings."[101] Remarkably, other factors that detracted from Bermudez's age, such as his lack of competence in reading and writing, did not affect the court's appreciation of Bermudez's capacity to understand his rights. Instead the court's *assumptions* regarding the capacity of a 17-year-old remained fixed, predicated on the legislature's ascribing criminal responsibility to begin at age 17. This foreclosed consideration that Bermudez's age might not be consonant with his competence in the context of understanding when he was in custody—much less aware that he was in danger of losing his due process protections. Ironically, months later, in July 2013, the Massachusetts legislature voted to change the age of majority to 18.[102]

In direct contrast, when a 17-year-old voluntarily went to the police station to confess to his involvement in a gang-related murder five days earlier, the California court in *People v. Rocha*[103] perceived that his age played a secondary role. As in the other cases involving 17-year-olds, the court invoked the fact that the 17-year-old was nearly 18, the age of majority, and therefore should be treated as an adult. While Rocha would have been arrested for purchasing alcohol or prohibited from voting at the age of 17, he was close enough to 18 to know what he was doing and be treated as an adult. The court acknowledged the *J.D.B.* holding but said, "This is

not to say that a child's age will be a determinative, or even a significant, factor in every case."[104] Again, the combination of a serious offense with a youth close to the age of majority was key to revoking consideration of age as a factor in determining youths' constitutional protections.

Finally, in *State v. Yancey*, a North Carolina police officer stopped a 17-year-old on a weekday morning because he looked of school age and was possibly truant.[105] The officer patted Yancey down, and Yancey allowed the officer to look in his backpack.[106] The officer found coins, jewelry, and an old class ring.[107] The officer took Yancey to the police station, where his mother picked him up. Later, two plainclothes officers in an unmarked car arrived at Yancey's house and asked him to ride with them.[108] The officers told Yancey he was free to leave at any time and allowed Yancey to sit in the front seat.[109] During the car ride, Yancey confessed to various break-ins.[110] On appeal, the court noted that Yancey was 17 years and 10 months old at the time of the encounter and therefore, "considering the totality of the circumstances, [Yancey's] age [did] not alter [the] court's conclusion that [Yancey] was not in custody during the . . . encounter with detectives."[111]

III. Privileging Youth's Innocence: Where There's a Will, Law Enforcement Knows There's a Way

It is easy to imagine better practices for police questioning of juveniles. That is in large part because national police organizations such as the International Association of Chiefs of Police (IACP) and the Commission on Accreditation of Law Enforcement Agencies (CALEA) have already written them.[112] These practices reflect profound appreciation of children's deficient understanding of the legal aspects of custody, their vulnerability to coercion, and their wishful temptation to believe that police officers are there to protect them.

Consider, for instance, the IACP's *Training Key 652* issued in 2011.[113] Written with juvenile defenders, including Steven Drizin, director of the Center for Wrongful Juvenile Convictions, this training key provides an explanation of the importance of getting this aspect of police-youth interactions right, as well as very practical steps for achieving it. The training key begins by acknowledging that youth are "not miniature adults."[114] The key notes that regardless of why a youth is interviewed,

"he or she is first and fundamentally still a child" and is "more prone to making involuntary or unreliable statements . . . particularly if certain questioning techniques are used."[115] Indeed, the training key notes that "even otherwise intelligent youths often do not fully understand their *Miranda* rights. . . . And even if a juvenile is able to build some understanding of his rights, he may have difficulty applying those rights to his own situation."[116]

The IACP recommends policies and procedures and provides age-appropriate language for *Miranda* questions as well as effective practices to ensure youth understand what is happening while in custody and during questioning:[117]

> The same terminology used with a seasoned adult suspect should not carry over to a juvenile; rather, the following model should be utilized, which uses short sentences and language understandable to children who can read at the third-grade level:
>
> 1. You have the right to remain silent. That means you do not have to say anything.
> 2. Anything you say can be used against you in court.
> 3. You have the right to get help from a lawyer right now.
> 4. You also have the right to have one or both of your parents here.
> 5. If you cannot pay a lawyer, the court will get you one for free.
> 6. You have the right to stop this interview at anytime.
> 7. Do you want to talk to me?
> 8. Do you want to have a lawyer with you while you talk to me?
> 9. Do you want your mother, father, or the person who takes care of you here while you talk to me?
>
> If this model is followed and the child is asked to explain each warning back in his or her own words, an officer should feel confident that the child understands the rights. If the conversation about the *Miranda* rights is preserved for posterity on tape, the *Miranda* waiver process will be nearly bulletproof in court.[118]

Although the training key was published prior to the decision in *J.D.B. v. North Carolina*, the decision and the training key align seamlessly.

Similarly, CALEA's Standard 44[119] makes clear that "given the special legal status of juveniles," departments should "be aware that the volun-

tariness of the juvenile's confession will generally be the issue."[120] Standard 44 names 19 factors that should determine the officer's approach to interview and interrogation of youth.[121] First and foremost on the list is *age*. In CALEA's Standard 44.2.3, subsection 8, agencies are warned that it is critical to determine about the juvenile "whether *Miranda* or police caution warnings were given, *when and whether he understood them*," and section 14 directs the officer to ascertain "*whether the juvenile understands the interrogation process*."[122]

Unfortunately, not enough law enforcement agencies follow these protocols. Too many members of the law enforcement community fail to recognize the importance of proactively, instead of coercively, using developmentally competent approaches with youth.[123] Too often expedience replaces accuracy and protection of youths' due process rights. As a result, situations involving juveniles' custody and questioning continue to remain a major source of legal challenges to officers' conduct with youth.

Strategies for Youth,[124] a policy and training advocacy organization dedicated to improving police-youth interactions, has developed guidelines and specific practices that reflect developmental competency:

> A person who is developmentally competent recognizes that how children and youth perceive, process and respond to situations is a function of their developmental stage, and secondarily their culture and life experience. Developmentally competent adults align their expectations, responses, and interactions—as well as those of institutions and organizations—to the developmental stage of the children and youth they serve.[125]

And this is where our hope lies: juvenile defenders can play an important role in improving law enforcement response to, and increasing protection of, juveniles' constitutional rights in an age-appropriate manner. One key strategy that defenders should consider is using the CALEA and IACP standards to challenge officers' conduct with youth in the murky realm of custody and provision of *Miranda* warnings. These law enforcement standards demonstrate the precautions that officers should take and implicitly invite defenders to ask why an officer failed to do so. Agencies accredited by CALEA must adopt practices and policies that align with CALEA standards, including Standard 44; thus, they are all on notice. There are law enforcement agencies that adhere to these standards and do

not become engaged in legal challenges over these core legal protections for youth, demonstrating that when an agency wants to, it can follow standards that operationalize the developmental differences of youth.

These standards offer a tremendous tool for challenging the legal fictions that the judiciary often invokes about how youth understand these situations and what youth "should" know at a given age regardless of individual differences and capacities. When defenders demonstrate that standard-setting law enforcement agencies appreciate that age affects youths' capacity to understand custody and their rights under the law, defenders are better positioned to question the *judiciary's* tendency to grant the officer the benefit of the doubt and rob the youth of the "privilege of innocence."

The major challenge before us is persuading law enforcement agencies to implement the model practices of CALEA and the IACP and to demand that the judiciary recognize its role in insisting that law enforcement follows these practices. This is imperative if we are going to provide youth meaningful legal protections in a juvenile justice system truly designed for youth.

Conclusion

This review of state courts' application of *J.D.B.* indicates that state courts' understanding of the role age plays in a youth's sense of agency and the power to resist coercion does not align with research about the workings of the teen brain. The U.S. Supreme Court in *Roper v. Simmons* grasped that youth is more "than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage."[126]

The Supreme Court's embrace of age as a key factor in invoking the due process protections to which youth are entitled unfortunately remains an abstraction that continues to be trumped by factors that reflect adults' perceptions instead of youths' understanding of their options when in the company of police. In a juvenile justice system that completely adopts a developmental approach and embraces the teaching of *J.D.B.*, police and the courts would implement developmentally informed training and guidelines that would give children and youth fairness and justice when they are questioned by police.

NOTES

1 *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011). This chapter reviews all available published decisions until January 1, 2014.

2 Since 2005, the U.S. Supreme Court has considered juveniles' developmental capacity in four cases; in three cases, the focus was whether the key characteristics of youth justified less extreme punishment. In *Roper v. Simmons*, 543 U.S. 511 (2005), the Court prohibited the use of the death penalty for juveniles who had committed offenses; in quick succession in 2010 and 2012, the Court prohibited the use of life without parole, respectively, for youth adjudicated for violent offenses that did not result in death and for states that mandatorily required such sentences for youth who committed homicide. *See Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 132 S. Ct. 2455, 567 U.S. ___ (2012).

3 International Association of Chiefs of Police, *Reducing Risk: An Executive's Guide to Effective Juvenile Interviewing and Interrogation* (September 2012), 1, https://www.hsdl.org/?view&did=723566.

4 Lisa H. Thurau, *If Not Now, When? A Survey of Juvenile Justice Training in American Police Academies* (Strategies for Youth, February 2013), http://strategies-foryouth.org/sfysite/wp-content/uploads/2013/03/SFYReport_02-2013_rev.pdf.

5 Phillip Goff, Matthew Christian Jackson, Brook Allison Lewis Di Leone, Carmen Marie Culotta, and Natalie Ann Di Tomasso, "The Essence of Innocence: Consequences of Dehumanizing Black Children," *Journal of Personality and Social Psychology* 106, no. 4 (2014): 526–545.

6 *Id.* at 527.

7 *J.D.B.*, 131 S. Ct. at 2396.

8 *Id.*

9 *Id.* at 2400.

10 *Id.* at 2399.

11 *Id.* at 2401 (*quoting Miranda v. Arizona*, 384 U.S. 436, 467 (1966)).

12 *Id.*

13 *Id.* at 2402 (*quoting Stansbury v. California*, 511 U.S. 318, 325 (1994)).

14 *Id.* at 2402–2403 (*quoting Stansbury*, 511 U.S. at 325).

15 *See id.* at 2403.

16 *Id.* at 2406.

17 *Id.* at 2407.

18 *Haley v. Ohio*, 332 U.S. 596, 599–600 (1948), emphasis added.

19 *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962).

20 A review of the top reasons juveniles are arrested, including disorderly conduct and obstruction of justice—what some people have called "contempt of cop" arrests—indicates the immediate consequences to a youth who defies a police officer. *See* Christy E. Lopez, *Disorderly (Mis)Conduct: The Problem with "Contempt of Cop" Arrests* (issue brief, American Constitution Society for Law and Policy, June 2010), http://www.acslaw.org/sites/default/files/

Lopez_Contempt_of_Cop.pdf; Justice Policy Institute, *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense* (May 2009), 2, http://www.justicepolicy.org/images/upload/09_05_rep_costsofconfinement_jj_ps.pdf.

21 *Hunt v. The Cape Henlopen School District*, 2012 WL 6650590; 2012 Del. Super. LEXIS 408 (Del. Super. Ct., Aug. 23, 2012).

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.*

26 *Hunt ex rel. DeSombre v. State Dep't of Safety & Homeland Sec., Div. of Delaware State Police*, 69 A.3d 360 (Del. 2013).

27 *Id.* at 366.

28 *In re Michael S.*, 2012 WL 3091576; 2012 Cal. App. Unpub. LEXIS 5623 (Ca. App. 2d Dist., July 31, 2012).

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.*

36 *In re J.S.*, 2012 WL 3157149; 2012 Ohio App. LEXIS 3115 (Ohio Ct. App., Clermont Cty., Aug. 6, 2012).

37 *Id.*

38 *Id.*

39 *In re Robert J.*, 2012 WL 1269184; 2012 Cal. App. Unpub. LEXIS 2816 (Cal. App. 4th Dist., Apr. 16, 2012).

40 Thomas Grisso, Laurence Steinberg, Jennifer Woolard, Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Reppucci, and Robert Schwartz, "Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants," *Law and Human Behavior* 27 (August 2003): 333–363.

41 *See, e.g.*, *Commonwealth v. Dillon D.*, 448 Mass. 793, 796 (2007) (requiring presence and actual consultation with parent or interested adult to establish a valid juvenile *Miranda* waiver).

42 *C.S. v. Couch*, 843 F. Supp. 2d 894 (N.D. Indiana, 2011).

43 *Id.* at 917.

44 *Id.* at 918.

45 *Id.* at 918–919.

46 *In re T.W.*, 2012 WL 1925656; 2012 Ohio App. LEXIS 2082 (Ohio Ct. App., Marion Cty., May 29, 2012).

47 *Id.*

48 *Id.* at ¶ 27.

49 *Id.* at ¶ 29.
50 *In re C.M.A.*, 2013 WL 3481517; 2013 Tex. App. LEXIS 8024 (Tx. Ct. App. Austin, July 2, 2013).
51 *In re Juan S.*, 2012 WL 1005027; 2012 Cal. App. Unpub. LEXIS 2272 (Cal. App. 4th Dist., Mar. 26, 2012).
52 *People v. Alexis C.*, 2013 WL 153758; 2013 Cal. App. Unpub. LEXIS 294 (Cal. App. 4th Dist., Jan. 15, 2013).
53 *Id.*
54 *Id.*
55 *Id.*
56 *People v. Nelson*, 53 Cal. 4th 367 (2012).
57 *Id.*
58 *Id.*
59 *Id.*
60 *Id.*
61 *Id.*
62 *Id.*
63 *In re J.W.*, 2011 WL 5594011; 2011 Cal. App. Unpub. LEXIS 8880 (Cal. App. 4th. Dist., Nov. 17, 2011) at 7.
64 *Id.*
65 *Id.*
66 *Gray v. Norman*, 2012 WL 4111837; 2012 U.S. Dist. LEXIS 133758 (E.D. Mo., Sept. 19, 2012).
67 *Id.*
68 *Id.*
69 *Id.*
70 *Id.*
71 *Id.*
72 *Id.* at 16.
73 *In re R.P.*, 718 S.E. 2d 423 (2011).
74 *Id.*
75 *Id.*
76 *State v. Oligney*, 2013 WL 5989691; 2013 Wisc. App. LEXIS 950 (2013).
77 *Miranda-Goodchild* hearings are "designed to examine (1) whether an accused in custody received Miranda warnings, understood them, and thereafter waived the right to remain silent and the right to the presence of an attorney; and (2) whether the admissions to police were the voluntary product of rational intellect and free, unconstrained will." *Id.* at ¶ 3, citing *State v. Jiles*, 663 N.W. 2d 798 (2003), based on *State ex rel. Goodchild v. Burke*, 133 N.W. 2d 753 (1963).
78 *Id.* at ¶ 16.
79 *Id.*
80 *Id.* at ¶ 17.

81 *Id.*
82 *People v. Lewis*, 2012 WL 1631677; 2012 Cal. App. Unpub. LEXIS 3500 (Cal. App. 4th Dist., May 10, 2012).
83 *Id.*
84 *Id.*
85 *Id.*
86 *Id.*
87 *Id.*
88 *In re J.V.*, 2013 WL 1641415; 2013 Cal. App. Unpub. LEXIS 2727 (Cal. App. 2d Dist., Apr. 17, 2013).
89 *State v. Pearson*, 804 N.W. 2d 260 (Iowa 2011).
90 *Id.*
91 *Id.*
92 *Id.*
93 *Id.* at 269.
94 *Commonwealth v. Bermudez*, 83 Mass. App. Ct. 46 (2012).
95 *Id.*
96 *Id.*
97 *Id.*
98 *Id.*
99 *Id.*
100 *Id.* at 52.
101 *Id.*
102 Commonwealth of Massachusetts, "Governor Patrick Signs Legislation Raising Age of Juvenile Jurisdiction to 18," press release, September 18, 2013, http://www.mass.gov/governor/pressoffice/pressreleases/2013/0918-juvenile-jurisdiction-legislation.html; John Kelly, "Massachusetts Includes 17-Year-Olds in Juvenile in Juvenile System; 10 States Remain That Don't," *Chronicle of Social Change*, September 19, 2013, https://chronicleofsocialchange.org/news/massachusetts-includes-17-year-olds-in-juvenile-system-10-states-remain-that-dont/3990; Jean Trounstine, "When Is a Juvenile No Longer a Juvenile?," *Boston Daily* (blog), June 21, 2013, http://www.bostonmagazine.com/news/blog/2013/06/21/massachusetts-juvenile-justice/.
103 *People v. Rocha*, 2013 WL 4774758; 2013 Cal. App. Unpub. LEXIS 6387 (Cal. App. 4th Dist., Sept. 6, 2013).
104 *Id.* at 7.
105 *State v. Yancey*, 727 S.E. 2d 382 (N.C. Ct. App. 2012).
106 *Id.*
107 *Id.*
108 *Id.*
109 *Id.*
110 *Id.*
111 *Id.* at 386.

112 *See* International Association of Chiefs of Police (IACP), *Training Key 652: Interview and Interrogation of Juveniles* (Alexandria, VA: IACP, 2011); Commission on Accreditation of Law Enforcement Agencies (CALEA), *Standards for Law Enforcement Agencies*, 5th ed. (Fairfax, VA: CALEA, issued 2006, updated 2012).

113 IACP, *supra* note 112.

114 *Id.* at 1.

115 *Id.* at 2.

116 *Id.* at 3.

117 *Id.*

118 *Id.*

119 *See* CALEA, *supra* note 112.

120 *Id.* at 44.2.3.

121 These include an officer considering the youth's "(1) *age, intelligence, educational background*, (2) *mental capacity*, including whether the defendant was nervous and physical condition, (3) *prior experience in the criminal system*, (4) whether the defendant is *suffering from an injury or pain at the time the statement is given*, (5) the *duration* of the questioning, (6) *time of day*, (7) *whether the defendant is tired* and is desirous of sleep, (8) *length of confinement*, (9) *whether Miranda or police caution warnings were given, when and whether he understood them*, (10) whether the room size was of sufficient size and supplied with appropriate furniture, (11) whether defendant was *cuffed or threatened*, (12) whether defendant was refused the use of bathroom, food, or drink, (13) whether there was a promise of leniency, (14) *whether the juvenile understands the interrogation process*, (15) whether a youth officer is present during the interview, (16) whether the parents were notified, (17) whether the juvenile asked for a parent to be present, (18) whether the police prevented a concerned adult from speaking with the juvenile, which is a significant factor, and (19) familiarity with English or the official language."

122 CALEA, *supra* note 112 (emphasis added).

123 Strategies for Youth, "Philosophy," http://strategiesforyouth.org/about/philosophy/ (accessed November 7, 2013).

124 Strategies for Youth is a national policy and training organization dedicated to providing law enforcement with best practices and effective alternatives to arrest and incarceration of youth and to reducing disproportionate minority contact. *Id.*

125 *Id.* "In order to become developmentally competent, an individual must: 1. Understand that children, adolescents, and adults interpret and respond differently to situations, social cues, interpersonal interactions, and the inherent power of adults, making them more vulnerable to external pressures and more compliant with authority; 2. Apply this knowledge to enhance and improve interactions with children and youth; 3. Calibrate institutional responses to the developmental stage of the children and youth served." *Id.*

126 *Roper v. Simmons*, 543 U.S. 551, 569 (2005).